

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 940  
Judiciary I Committee Substitute Adopted 7/1/93

Short Title: Charitable Solicitations.

(Public)

Sponsors:

Referred to: Finance.

April 21, 1993

A BILL TO BE ENTITLED  
AN ACT TO REWRITE THE CHARITABLE SOLICITATIONS ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 131C of the General Statutes is repealed.

Sec. 2. The General Statutes are amended by adding a new Chapter to read:

**"CHAPTER 131F.**  
**"SOLICITATION OF CONTRIBUTIONS.**  
**"ARTICLE 1.**  
**"GENERAL PROVISIONS.**

**"§ 131F-1. Purpose.**

The General Assembly recognizes the right of persons or organizations to conduct solicitation activities. It is the intent of the General Assembly to protect the public by requiring full disclosure by persons who solicit contributions from the public, the purposes for which the contributions are solicited, and how the contributions are actually used. It is the intent of the General Assembly to prohibit deception, fraud, and misrepresentation in the solicitation and reporting of contributions.

**"§ 131F-2. Definitions.**

The following definitions apply in this Chapter:

- (1) 'Charitable' means for a benevolent purpose, including environmental, health, educational, humane, patriotic, scientific, artistic, social welfare, and civic.

- 1           (2) 'Charitable organization' means any person who has or holds out as  
2 having a section 501(c)(3) tax exempt determination by the Internal  
3 Revenue Service and operates for a charitable purpose. 'Charitable  
4 organization' includes a chapter, branch, area office, or similar affiliate  
5 soliciting contributions within the State for a charitable organization  
6 which has its principal place of business outside the State.
- 7           (3) 'Charitable sales promotion' means an advertising or sales campaign  
8 that represents that the purchase or use of goods or services offered by  
9 a coventurer is to benefit a charitable organization. The provision of  
10 advertising services alone to a charitable organization does not  
11 constitute a charitable sales promotion.
- 12           (4) 'Contribution' means a promise, pledge, grant of any money or  
13 property, financial assistance, or any other thing of value in response  
14 to a solicitation. 'Contribution' includes, in the case of a charitable  
15 organization or sponsor offering goods or services to the public, the  
16 difference between the direct cost of the goods and services to the  
17 charitable organization or sponsor and the price at which the charitable  
18 organization or sponsor or any person acting on behalf of the  
19 charitable organization or sponsor resells those goods or services to the  
20 public. 'Contribution' does not include bona fide fees, dues, or  
21 assessments paid by members if the membership is not conferred  
22 solely as consideration for making a contribution in response to a  
23 solicitation. 'Contribution' does not include funds obtained by a  
24 charitable organization or sponsor under government grants or  
25 contracts.
- 26           (5) 'Coventurer' means any person who, for compensation, conducts a  
27 charitable sales promotion or a sponsor sales promotion, other than in  
28 connection with the solicitation of contributions.
- 29           (6) 'Department' means the Department of Human Resources.
- 30           (7) 'Emergency service employees' means employees who are fire fighters,  
31 ambulance drivers, emergency medical technicians, or paramedics.
- 32           (8) 'Federated fund-raising organization' means a federation of  
33 independent charitable organizations which have voluntarily joined  
34 together, including a united way or community chest, for the purpose  
35 of raising and distributing contributions and where membership does  
36 not confer operating authority and control of the individual  
37 organization upon the federated group organization.
- 38           (9) 'Fund-raising consultant' means any person who meets all of the  
39 following:
- 40           a. Is retained by a charitable organization or sponsor for a fixed  
41 fee or rate under a written agreement to plan, manage, conduct,  
42 consult, or prepare material for the solicitation of contributions  
43 in this State.

- 1                   b.     Does not solicit contributions or employ, procure, or engage  
2                    any person to solicit contributions.
- 3                   c.     Does not at any time have custody or control of contributions.
- 4           (10)   'Fund-raising costs' means those costs incurred in inducing others to  
5                   make contributions to a charitable organization or sponsor for which  
6                   the contributors will receive no direct economic benefit. Fund-raising  
7                   costs include salaries, rent, acquiring and obtaining mailing lists,  
8                   printing, mailing, all direct and indirect costs of soliciting, and the cost  
9                   of unsolicited merchandise sent to encourage contributions.
- 10           (11)   'Law enforcement officers' means persons who are elected, appointed,  
11                   or employed by the State or any political subdivision of the State and  
12                   who meet either of the following:
- 13                   a.     Are vested with the authority to bear arms and make arrests and  
14                    have primary responsibility to prevent and detect crime or  
15                    enforce the criminal, traffic, or highway laws of the State.
- 16                   b.     Have responsibility for supervision, protection, care, custody, or  
17                    control of inmates within a correctional institution.
- 18           (12)   'Membership' means the relationship of a person to an organization  
19                   that entitles that person to the privileges, professional standing, honors,  
20                   or other direct benefits of the organization in addition to the right to  
21                   vote, elect officers, and hold office in the organization.
- 22           (13)   'Owner' means any person who has a direct or indirect interest in any  
23                   fund-raising consultant or solicitor.
- 24           (14)   'Parent organization' means that part of a charitable organization or  
25                   sponsor which coordinates, supervises, or exercises control over  
26                   policy, fund-raising, and expenditures or assists or advises one or more  
27                   chapters, branches, or affiliates of a charitable organization or sponsor.
- 28           (15)   'Person' means any individual, organization, trust, foundation,  
29                   association, group, entity, partnership, corporation, society, or any  
30                   combination of these acting as a unit.
- 31           (16)   'Religious institution' means any church, ecclesiastical, or  
32                   denominational organization, or any established physical place for  
33                   worship in this State at which nonprofit religious services and  
34                   activities are regularly conducted, and any bona fide religious groups  
35                   that do not maintain specific places of worship. 'Religious institution'  
36                   includes any separate group or corporation that forms an integral part  
37                   of a religious institution that is exempt from federal income tax under  
38                   the provisions of section 501(c)(3) of the Internal Revenue Code, and  
39                   that is primarily supported by funds solicited inside its own  
40                   membership or congregation.
- 41           (17)   'Solicitation' means a request, directly or indirectly, for money,  
42                   property, financial assistance, or any other thing of value on the plea or  
43                   representation that it will be used for a charitable or sponsor purpose

1 or will benefit a charitable organization or sponsor. 'Solicitation' may  
2 occur by any of the following methods:

- 3 a. Any oral or written request.  
4 b. Any announcement to the press, radio, or television, by  
5 telephone or telegraph, or by any other communication device.  
6 c. Distributing, posting, or publishing any handbill, written  
7 advertisement, or other publication that directly or by  
8 implication seeks to obtain any contribution.  
9 d. Selling or offering or attempting to sell any good, service,  
10 chance, right, or any thing of value to benefit a charitable  
11 organization or sponsor.

12 The selling or offering or attempting to sell is a 'solicitation' whether or  
13 not the person making the solicitation receives any contribution. It is  
14 not a 'solicitation' when a person applies for a grant or an award to the  
15 government or to an organization that is exempt from federal income  
16 taxation under section 501(a) of the Internal Revenue Code and  
17 described in section 501(c) of the Internal Revenue Code.

18 (18) 'Solicitor' means any person who, for compensation, does not qualify  
19 as a fund-raising consultant and does either of the following:

- 20 a. Performs any service, including the employment or engagement  
21 of other persons or services, to solicit contributions for a  
22 charitable organization or sponsor.  
23 b. Plans, conducts, manages, consults, whether directly or  
24 indirectly, in connection with the solicitation of contributions  
25 for a charitable organization or sponsor.

26 (19) 'Sponsor' means a person who is or holds out to others as soliciting  
27 contributions by the use of any name that implies affiliation with  
28 emergency service employees or law enforcement officers and who is  
29 not a charitable organization. 'Sponsor' includes a chapter, branch, or  
30 affiliate that has its principal place of business outside the State, if this  
31 chapter, branch, or affiliate solicits or holds out to be soliciting  
32 contributions in this State.

33 (20) 'Sponsor purpose' means any program or endeavor performed to  
34 benefit emergency service employees or law enforcement officers.

35 (21) 'Sponsor sales promotion' means an advertising or sales campaign  
36 conducted by a coventurer who represents that the purchase or use of  
37 goods or services offered by the coventurer will be used for a sponsor  
38 purpose or donated to a sponsor. The provision of advertising services  
39 alone to a sponsor does not constitute a sponsor sales promotion.

40 **"§ 131F-3. Exemptions.**

41 The following are exempt from the provisions of this Chapter:

- 42 (1) Any person who solicits charitable contributions for a religious  
43 institution.

- 1           (2) Solicitation of charitable contributions by the federal, State, or local  
2 government, or any of their agencies. For purposes of this subdivision  
3 any volunteer fire department or rescue squad that receives any funds  
4 from federal, State, or local government shall be considered an agency.
- 5           (3) Any person who receives less than ten thousand dollars (\$10,000) in  
6 contributions in any calendar year and does not provide compensation  
7 to any officer, trustee, organizer, incorporator, fund-raiser, or solicitor.
- 8           (4) Any educational institution, the curriculum of which in whole or in  
9 part, is registered, approved, or accredited by the Southern Association  
10 of Colleges and Schools or an equivalent regional accrediting body;  
11 and any educational institution in compliance with Article 39 of  
12 Chapter 115C of the General Statutes; and any foundation or  
13 department having an established identity with any of these  
14 educational institutions.
- 15           (5) Any hospital licensed pursuant to Article 5 of Chapter 131E of the  
16 General Statutes and any foundation or department having an  
17 established identity with that hospital if the governing board of the  
18 hospital authorizes the solicitation and receives an accounting of the  
19 funds collected and expended.
- 20           (6) Any noncommercial radio or television station.
- 21           (7) A qualified community trust as provided in 26 C.F.R. § 1.170A-  
22 9(e)(10) through (e)(14).
- 23           (8) A bona fide volunteer or bona fide employee or salaried officer of a  
24 charitable organization or sponsor.
- 25           (9) An attorney, investment counselor, or banker who advises a person to  
26 make a charitable contribution.

## "ARTICLE 2.

### "CHARITABLE ORGANIZATIONS AND SPONSORS.

#### "§ 131F-5. Licensure of charitable organizations and sponsors required.

30           (a) License Required. – Unless exempted under G.S. 131F-3, a charitable  
31 organization, sponsor, or person that intends to solicit contributions in this State, to have  
32 funds solicited on its behalf, or to participate in a charitable sales promotion or sponsor  
33 sales promotion shall obtain a license by filing an application with the Department,  
34 obtaining approval of that application by the Department, and paying the applicable fee.

35           (b) Departmental Review.– The Department shall examine each application filed  
36 by a charitable organization or sponsor and shall determine whether the licensing  
37 requirements are satisfied. If the Department determines that the requirements are not  
38 satisfied, the Department shall notify the charitable organization or sponsor within 10  
39 days after its receipt of the application. If the Department does not notify the charitable  
40 organization or sponsor within 10 days, the application is deemed to be approved and  
41 the license shall be granted. Within seven days after receipt of a notification that the  
42 requirements are not satisfied, the charitable organization or sponsor may request a  
43 hearing. The hearing shall be held within seven days after receipt of the request. Any  
44 recommended order, if one is issued, shall be rendered within three days of the hearing.

1 The final order shall then be issued within two days after the recommended order. If no  
2 recommended order is issued, the final order shall be issued within five days after the  
3 hearing. The proceedings shall be conducted in accordance with Chapter 150B of the  
4 General Statutes except that the time limits and provisions set forth in this section shall  
5 prevail to the extent of any conflict.

6 (c) License Renewal. – The license shall be renewed on an annual basis. Any  
7 change in information from the original application for a license shall be filed annually  
8 on or before the fifteenth day of the fifth calendar month after the close of each fiscal  
9 year in which the charitable organization or sponsor solicited in this State, or by the date  
10 of any applicable extension of the federal filing date, whichever is later, provided that  
11 extensions given under this section shall not exceed three months after the initial  
12 renewal date or eight months after the conclusion of the year for which financial  
13 information is due at the time of renewal. A charitable organization or sponsor whose  
14 federal filing date has been extended shall, within seven days after receipt, forward a  
15 copy of the document granting the extension to the Department.

16 (d) Extension of Time. – For good cause shown, the Department may extend the  
17 time for the license renewal and the annual filing of updated information for a period  
18 not to exceed 60 days, during which time the previous license shall remain in effect.

19 **"§ 131F-6. Information required for licensure.**

20 (a) Initial Information Required. – The initial application for a license for a  
21 charitable organization or sponsor shall be submitted on a form provided by the  
22 Department, signed under oath by the treasurer or chief fiscal officer of the charitable  
23 organization or sponsor, and shall include the following:

- 24 (1) The name of the charitable organization or sponsor, the purpose for  
25 which it is organized, the name under which it intends to solicit  
26 contributions, and the purpose for which the contributions to be  
27 solicited will be used.
- 28 (2) The principal street address and telephone number of the charitable  
29 organization or sponsor and the street address and telephone numbers  
30 of any offices in this State or, if the charitable organization or sponsor  
31 does not maintain an office in this State, the name, street address, and  
32 telephone number of the person who has custody of its financial  
33 records. The parent organization that files a consolidated registration  
34 statement under G.S. 131F-7 on behalf of its chapters, branches, or  
35 affiliates shall additionally provide the street addresses and telephone  
36 numbers of all of its locations in this State.
- 37 (3) The names and street addresses of the officers, directors, trustees, and  
38 the salaried executive personnel.
- 39 (4) The date when the charitable organization's or sponsor's fiscal year  
40 ends.
- 41 (5) A list or description of the major program activities.
- 42 (6) The names, street addresses, and telephone numbers of the individuals  
43 or officers who have final responsibility for the custody of the

- 1                    contributions and who will be responsible for the final distribution of  
2                    the contributions.
- 3            (7)    The name of the individuals or officers who are in charge of any  
4                    solicitation activities.
- 5            (8)    A financial report for the immediately preceding fiscal year upon a  
6                    form provided by the Department. The report shall include the  
7                    following:
- 8                    a.    The balance sheet.
- 9                    b.    A statement of support, revenue, and expenses, and any change  
10                    in the fund balance.
- 11                    c.    The names and addresses of any fund-raising consultant,  
12                    solicitor, and coventurer used, if any, and the amounts received  
13                    from each of them, if any.
- 14                    d.    A statement of expenses in the following categories:
- 15                            1.    Program.
- 16                            2.    Management and general.
- 17                            3.    Fund-raising.
- 18            (9)    In substitution for the financial report described in subdivision (8) of  
19                    this subsection, a charitable organization or sponsor may submit a  
20                    copy of its Internal Revenue Service Form 990 and Schedule A filed  
21                    for the preceding fiscal year, or a copy of its Form 990-EZ filed for the  
22                    preceding fiscal year.
- 23            (10)   A charitable organization or sponsor may include a financial report  
24                    which has been audited by an independent certified public accountant  
25                    or an audit with opinion by an independent certified public accountant.  
26                    In the event that a charitable organization or sponsor elects to file this,  
27                    this optional filing shall be noted in the Department's annual report  
28                    submitted under G.S. 131F-25.
- 29            (11)   A newly organized charitable organization or sponsor with no financial  
30                    history shall file a budget for the current fiscal year.
- 31            (12)   A statement indicating all of the following:
- 32                    a.    Whether or not the charitable organization or sponsor is  
33                    authorized by any other state to solicit contributions.
- 34                    b.    Whether or not the charitable organization or sponsor or any of  
35                    its officers, directors, trustees, or salaried executive personnel  
36                    have been enjoined in any jurisdiction from soliciting  
37                    contributions or have been found to have engaged in unlawful  
38                    practices in the solicitation of contributions or administration of  
39                    charitable assets.
- 40                    c.    Whether or not the charitable organization or sponsor has had  
41                    its authority denied, suspended, or revoked by any  
42                    governmental agency, together with the reasons for the denial,  
43                    suspension, or revocation.

d. Whether or not the charitable organization or sponsor has voluntarily entered into an assurance of voluntary compliance or agreement similar to that set forth in G.S. 131F-24(c), together with a copy of that agreement.

(13) The names, street addresses, and telephone numbers of any solicitor, fund-raising consultant, or coventurer who is acting or has agreed to act on behalf of the charitable organization or sponsor, together with a statement setting forth the specific terms of the arrangements for salaries, bonuses, commissions, expenses, or other compensation to be paid the fund-raising consultant, solicitor, or coventurer.

(14) With initial licensing only, when and where the organization was established, the tax-exempt status of the organization, and a copy of any federal tax exemption determination letter. If the charitable organization or sponsor has not received a federal tax exemption determination letter at the time of initial licensing, a copy of the determination shall be filed with the Department within 30 days after receipt of the determination by the charitable organization or sponsor. If the organization is subsequently notified by the Internal Revenue Service of any challenge to its continued entitlement to federal tax exemption, the charitable organization or sponsor shall notify the Department of this fact within 30 days after receipt.

(b) Renewal Information Required. – A license shall be renewed on an annual basis. The charitable organization or sponsor shall submit any changes in the information submitted from the initial application.

**"§ 131F-7. Consolidated application and renewal.**

(a) Election to File Consolidated Application. – Each chapter, branch, or affiliate of a parent organization that is required to obtain a license under G.S. 131F-5 shall either file a separate application or shall report the required information to its parent organization. The parent organization may then file, on a form provided by the Department, a consolidated application for the parent organization and its chapters, branches, and affiliates located in this State.

(b) Consolidated Financial Information. – If all contributions received by chapters, branches, or affiliates are remitted directly into the parent organization's centralized accounting system from which all disbursements are made, the parent organization may submit one consolidated financial report as part of the application on a form provided by the Department.

(c) Renewal Information. – The parent organization may file the information required for a renewal of a license in a consolidated form provided by the Department.

**"§ 131F-8. License fees.**

(a) Required Fees. – Except as provided in subsections (b) and (c) of this section, every charitable organization or sponsor shall pay the following fees with each license application:

(1) Fifty dollars (\$50.00), if the contributions received for the last fiscal year were less than one hundred thousand dollars (\$100,000).



1           (2) One hundred dollars (\$100.00), if the contributions received for the  
2 last fiscal year were one hundred thousand dollars (\$100,000) or more,  
3 but less than two hundred thousand dollars (\$200,000).

4           (3) Two hundred dollars (\$200.00), if the contributions received for the  
5 last fiscal year were two hundred thousand dollars (\$200,000) or more.

6       (b) Exemption. – A licensed charitable organization or sponsor that received less  
7 than five thousand dollars (\$5,000) in the last calendar or fiscal year shall not pay a fee.

8       (c) Parent Organization. – A parent organization filing on behalf of one or more  
9 chapters, branches, or affiliates shall pay a single license fee for itself and its other  
10 chapters, branches, or affiliates. These license fees shall be imposed as follows:

11           (1) One hundred dollars (\$100.00) for a parent organization and one to  
12 five chapters, branches, or affiliates.

13           (2) Two hundred dollars (\$200.00) for a parent organization and 6 to 10  
14 chapters, branches, or affiliates.

15           (3) Two hundred fifty dollars (\$250.00) for a parent organization and 11  
16 to 15 chapters, branches, or affiliates.

17           (4) Four hundred dollars (\$400.00) for a parent organization and 16 or  
18 more chapters, branches, or affiliates.

19       (d) Late Filing. – A charitable organization or sponsor which fails to file the  
20 renewal information by the due date may be assessed an additional fee for the late filing.  
21 The late filing fee shall be established by rule of the Department and shall not exceed  
22 twenty-five dollars (\$25.00) for each month or part of a month after the date on which  
23 the information was due to be filed or after the period of extension granted for the filing.

24       (e) Fund Created. – The Solicitation of Contributions Fund is created. All  
25 license fees shall be paid to the Department and deposited into this Fund to be used to  
26 pay the costs incurred in administering and enforcing this Chapter.

27 **"§ 131F-9. Disclosure requirements of charitable organizations and sponsors.**

28       (a) Contributions for Expressed Purpose. – A charitable organization or sponsor  
29 shall solicit contributions only for the purpose expressed in its application and may  
30 apply contributions only in a manner substantially consistent with that purpose.

31       (b) Disclosures. – A charitable organization or sponsor soliciting in this State  
32 shall include all of the following disclosures at the point of solicitation:

33           (1) The name of the charitable organization and state of the principal place  
34 of business of the charitable organization or sponsor.

35           (2) A description of the purpose for which the solicitation is being made.

36           (3) Upon request, the name and either the address or telephone number of  
37 a representative to whom inquiries could be addressed.

38           (4) Upon request, the amount of the contribution which may be deducted  
39 as a charitable contribution under federal income tax laws.

40           (5) Upon request, the source from which a written financial statement may  
41 be obtained. The financial statement shall be for the immediate past  
42 fiscal year and shall be consistent with G.S. 131F-6. The written  
43 financial statement shall be provided within 14 days after the request  
44 and shall state the purpose for which funds are raised, the total amount



1           of any felony, or of any misdemeanor arising from the conduct of a  
2           solicitation for a charitable organization or sponsor or charitable or  
3           sponsor purpose, or been enjoined from violating a charitable  
4           solicitation law in this or any other state.

5       (c)   Fees. – The application for an initial or renewal license shall be accompanied  
6       by a license fee of two hundred dollars (\$200.00). A fund-raising consultant that is a  
7       partnership or corporation may obtain a license for and pay a single fee on behalf of all  
8       of its partners, members, officers, directors, agents, and employees. In that case, the  
9       names and street addresses of all of the officers, employees, and agents of the fund-  
10       raising consultant and all other persons with whom the fund-raising consultant has  
11       contracted to work under its direction shall be listed in the license application. Each  
12       license is valid for one year or a part of one year and expires on March 31 of each year.  
13       The license may be renewed on or before March 31 of each year for additional one-year  
14       periods upon application to the Department and payment of the license fee.

15       (d)   Contracts. – Every contract or agreement between a fund-raising consultant  
16       and a charitable organization or sponsor shall be in writing, signed by two authorized  
17       officials of the charitable organization or sponsor, and filed by the fund-raising  
18       consultant with the Department at least five days prior to the performance of any service  
19       by the fund-raising consultant. Solicitation under the contract or agreement shall not  
20       begin before the filing of the contract or agreement. The contract shall contain all of the  
21       following provisions:

- 22           (1)   A statement of the charitable purpose or sponsor purpose for which the  
23           solicitation campaign is being conducted.
- 24           (2)   A statement of the respective obligations of the fund-raising consultant  
25           and the charitable organization or sponsor.
- 26           (3)   A clear statement of the fee that will be paid to the fund-raising  
27           consultant.
- 28           (4)   The effective and termination dates.
- 29           (5)   A statement that the fund-raising consultant shall not, at any time, have  
30           control or custody of contributions.

31       (e)   Departmental Review. – The Department shall examine each application or  
32       renewal filed by a fund-raising consultant and determine whether the requirements are  
33       satisfied. If the Department determines that the requirements are not satisfied, the  
34       Department shall notify the fund-raising consultant within 10 days after its receipt of the  
35       application or renewal. If the Department does not respond within 10 days, the license is  
36       deemed approved. Within seven days after receipt of a notification that the license  
37       requirements are not satisfied, the applicant may request a hearing. The hearing shall be  
38       held within seven days after receipt of the request. Any recommended order, if one is  
39       issued, shall be rendered within three days after the hearing. The final order shall then  
40       be issued within two days after the recommended order. If there is no recommended  
41       order, the final order shall be issued within five days after the hearing. The proceedings  
42       shall be conducted in accordance with Chapter 150B of the General Statutes, except that  
43       the time limits and provisions set forth in this section shall prevail to the extent of any  
44       conflict.

1       (f) Fund. – All license fees shall be paid to the Department and deposited into  
2 the Solicitation of Contributions Fund to be used to pay the costs incurred in  
3 administering and enforcing this Chapter.

4       (g) Change in Information. – Unless otherwise provided, any material change in  
5 information filed with the Department pursuant to this section shall be reported in  
6 writing to the Department within seven working days after the change occurred.

7 **"§ 131F-16. License required for solicitors.**

8       (a) Licensure Required. – Unless exempted under G.S. 131F-3, a person shall not  
9 act as a solicitor in this State unless that person has obtained a license from the  
10 Department and paid the applicable fees.

11       (b) Applications. – Applications for a license or renewal of a license shall be  
12 submitted on a form provided by the Department, shall be signed under oath, and shall  
13 include the following information:

14           (1) The street address and telephone number of the principal place of  
15 business of the applicant and any North Carolina street addresses if the  
16 principal place of business is located outside this State.

17           (2) The form of the applicant's business.

18           (3) The place and date when the applicant, if other than an individual, was  
19 legally established.

20           (4) The names and residence addresses of all officers, directors, and  
21 owners.

22           (5) A statement as to whether any of the owners, directors, officers, or  
23 employees of the applicant are related as parent, spouse, child, or  
24 sibling to:

25               a. Any other directors, officers, owners, or employees of the  
26 applicant.

27               b. Any officer, director, trustee, or employee of any charitable  
28 organization or sponsor under contract to the applicant.

29               c. Any supplier or vendor providing goods or services to any  
30 charitable organization or sponsor under contract to the  
31 applicant.

32           (6) A statement as to whether the applicant or any of the directors,  
33 officers, persons with a controlling interest in the applicant, or  
34 employees or agents involved in solicitation have been convicted,  
35 within the last five years, of any felony, or of a misdemeanor arising  
36 from the conduct of a solicitation for any charitable organization or  
37 sponsor or charitable or sponsor purpose, or been enjoined from  
38 violating a charitable solicitation law in this or any other state.

39           (7) The names of all persons in charge of any solicitation activity.

40       (c) Fees. – The application for an initial or renewal license shall be accompanied  
41 by a fee of two hundred dollars (\$200.00). A solicitor that is a partnership or  
42 corporation may register for and pay a single fee on behalf of all of the partners,  
43 members, officers, directors, agents, and employees. In that case, the names and street  
44 addresses of all the officers, employees, and agents of the solicitor and all other persons

1 with whom the solicitor has contracted to work under that solicitor's direction, including  
2 solicitors, shall be listed in the license application or furnished to the Department within  
3 five days after the date of employment or contractual arrangement. Each license is valid  
4 for one year or a part of one year and expires on March 31 of each year. The license  
5 may be renewed on or before March 31 of each year for an additional one-year period  
6 upon application to the Department and payment of the license fee.

7 (d) Bond. – A solicitor shall, at the time of application or renewal of the license,  
8 file with and have approved by the Department a bond with a surety authorized to do  
9 business in this State and to which the solicitor is the principal obligor. The amount of  
10 the bond shall be determined as follows:

11 (1) Twenty thousand dollars (\$20,000), if the contributions received for  
12 the last fiscal year were less than one hundred thousand dollars  
13 (\$100,000).

14 (2) Thirty thousand dollars (\$30,000), if the contributions received for the  
15 last fiscal year were at least one hundred thousand dollars (\$100,000)  
16 but less than two hundred thousand dollars (\$200,000).

17 (3) Fifty thousand dollars (\$50,000), if the contributions received for the  
18 last fiscal year were at least two hundred thousand dollars (\$200,000).

19 The solicitor shall maintain the bond in effect as long as the license is in effect. The  
20 liability of the surety under the bond shall not exceed an all-time aggregate liability of  
21 fifty thousand dollars (\$50,000). The bond, which may be in the form of a rider to a  
22 larger blanket liability bond, shall be payable to the State and to any person who may  
23 have a cause of action against the principal obligor of the bond for any liability arising  
24 out of a violation by the obligor of any provision of this Chapter or any rule adopted  
25 under this Chapter.

26 (e) Departmental Review. – The Department shall examine each application filed  
27 by a solicitor. If the Department determines that the requirements are not satisfied, the  
28 Department shall notify the solicitor within 10 days after its receipt of the application. If  
29 the Department does not respond within 10 days, the license is deemed approved.  
30 Within seven days after receipt of a notification that the requirements are not satisfied,  
31 the applicant may request a hearing. The hearing shall be held within seven days after  
32 receipt of the request. Any recommended order, if one is issued, shall be rendered  
33 within three days after the hearing. The final order shall then be issued within two days  
34 after the recommended order. If there is no recommended order, the final order shall be  
35 issued within five days after the hearing. The proceedings shall be conducted in  
36 accordance with Chapter 150B of the General Statutes, except that the time limits and  
37 provision set forth in this subsection prevail to the extent of any conflict.

38 (f) Solicitation Notice. – No less than five days before commencing any  
39 solicitation campaign or event, the solicitor shall file with the Department a solicitation  
40 notice on a form provided by the Department. The notice shall be signed and sworn to  
41 by the contracting officer of the solicitor and shall include:

42 (1) A description of the solicitation event or campaign.

43 (2) Each location and telephone number from which the solicitation is to  
44 be conducted.

- 1           (3)    The legal name and residence address of each person responsible for  
2           directing and supervising the conduct of the campaign.
- 3           (4)    A statement as to whether the solicitor will, at any time, have custody  
4           of contributions.
- 5           (5)    The account number and location of each bank account where receipts  
6           from the campaign are to be deposited.
- 7           (6)    A full and fair description of the charitable or sponsor program for  
8           which the solicitation campaign is being carried out as provided in the  
9           contract between the solicitor and the charitable organization or  
10          sponsor.
- 11          (7)    The fund-raising methods to be used.
- 12          (8)    A copy of the contract executed in accordance with subsection (g) of  
13          this section.

14          (g)    Contracts. – Each contract or agreement between a solicitor and a charitable  
15          organization or sponsor for each solicitation campaign shall be in writing, shall be  
16          signed by two authorized officials of the charitable organization or sponsor, one of  
17          whom shall be a member of the organization's governing body and one of whom shall  
18          be the authorized contracting officer for the solicitor. Each contract or agreement shall  
19          contain all of the following provisions:

- 20               (1)    A statement of the charitable or sponsor purpose and program for  
21               which the solicitation campaign is being conducted.
- 22               (2)    A statement of the respective obligations of the solicitor and the  
23               charitable organization or sponsor.
- 24               (3)    A statement of the guaranteed minimum percentage of the gross  
25               receipts from contributions which will be remitted to the charitable  
26               organization or sponsor. If the solicitation involves the sale of goods,  
27               services, or tickets to a fund-raising event, the percentage of the  
28               purchase price which will be remitted to the charitable organization or  
29               sponsor. Any stated percentage shall exclude any amount which the  
30               charitable organization or sponsor shall pay as fund-raising costs.
- 31               (4)    A statement of the percentage of the gross revenue for which the  
32               solicitor shall be compensated. If the compensation of the professional  
33               solicitor is not contingent upon the number of contributions or the  
34               amount of revenue received, the compensation shall be expressed as a  
35               reasonable estimate of the percentage of the gross revenue, and the  
36               contract shall clearly disclose the assumptions upon which the estimate  
37               is based. The stated assumptions shall be based upon all of the  
38               relevant facts known to the solicitor regarding the solicitation to be  
39               conducted by the solicitor.
- 40               (5)    The effective and termination dates of the contract.

41          (h)    Financial Report. – Within 90 days after a solicitation campaign has been  
42          completed and on the anniversary of the commencement of a solicitation campaign  
43          lasting more than one year, the solicitor shall provide to the charitable organization or  
44          sponsor and file with the Department a financial report of the campaign, including the

1 gross revenue received and an itemization of all expenses incurred. The report shall be  
2 completed on a form provided by the Department and shall be signed by an authorized  
3 official of the solicitor who shall certify under oath that the report is true and correct.

4 (i) Handling of Contributions. – Each contribution collected by or in the custody  
5 of the solicitor shall be solely in the name of the charitable organization or sponsor on  
6 whose behalf the contribution was solicited. Not later than two days after receipt of  
7 each contribution, the solicitor shall deposit the entire amount of the contribution in an  
8 account at a bank or other federally insured financial institution, which account shall be  
9 in the name of that charitable organization or sponsor. The charitable organization or  
10 sponsor shall have sole control of all withdrawals from the account and the solicitor  
11 shall not be given the authority to withdraw any deposited funds from the account.

12 (j) Records of Solicitors. – During each solicitation campaign, and for not less  
13 than three years after its completion, the solicitor shall maintain the following records:

- 14 (1) The date and amount of each contribution received and the name,  
15 address, and telephone number of each contributor.
- 16 (2) The name and residence street address of each employee, agent, and  
17 any other person, however designated, who is involved in the  
18 solicitation, the amount of compensation paid to each, and the dates on  
19 which the payments were made.
- 20 (3) A record of all contributions that at any time are in the custody of the  
21 solicitor.
- 22 (4) A record of all expenses incurred by the solicitor for the payment of  
23 which the solicitor is liable.
- 24 (5) A record of all expenses incurred by the solicitor for the payment of  
25 which the charitable organization or sponsor is liable.
- 26 (6) The location of each bank or financial institution in which the solicitor  
27 has deposited revenue from the solicitation campaign and the account  
28 number of each account in which the deposits were made.
- 29 (7) A copy of each pitch sheet or solicitation script used during the  
30 completed solicitation campaign.
- 31 (8) If a refund of a contribution has been requested, the name and address  
32 of each person requesting the refund. If a refund was made, the amount  
33 and the date it was made.

34 (k) Records of Tickets. – If the solicitor sells tickets to any event and represents  
35 that the tickets will be donated for use by another person, the solicitor shall maintain for  
36 at least three years the following records:

- 37 (1) The name and address of each contributor who purchases or donates  
38 tickets and the number of tickets purchased or donated by the  
39 contributor.
- 40 (2) The name and address of each organization that receives the donated  
41 tickets for the use of others, and the number of tickets received by the  
42 organization.

1       (l) Review of Records. – Any of the records described in this section shall be  
2 made available to the Department upon request and shall be furnished within 10 days  
3 after the request.

4       (m) Change in Information. – Unless otherwise provided in this Chapter, any  
5 change in any information filed with the Department under this section shall be reported  
6 in writing to the Department within seven days after the change occurs.

7       (n) License Rescinded. – Any person licensed as a solicitor shall permanently  
8 lose that person's license if it is determined that that person, any officer or director  
9 thereof, any person with a ten percent (10%) or greater interest therein, or any person  
10 the solicitor employs, engages, or procures to solicit for compensation, has been  
11 convicted in the last five years of a crime arising from the conduct of a solicitation for a  
12 charitable organization or sponsor or a charitable purpose or sponsor purpose.

13       (o) Fees Deposited in Fund. – All license fees shall be paid to the Department  
14 and deposited into the Solicitation of Contributions Fund to be used to pay the costs  
15 incurred in administering and enforcing this Chapter.

16 **"§ 131F-17. Disclosure requirements of solicitors.**

17       (a) General Disclosures. – A solicitor shall comply with the following  
18 disclosures:

19           (1) Prior to orally requesting a contribution or along with a written request  
20 for a contribution, a solicitor shall clearly disclose:

21               a. The name of the solicitor as on file with the Department.

22               b. If the individual acting on behalf of the solicitor identifies  
23 himself by name, the individual's legal name.

24           (2) In the case of a solicitation campaign conducted orally, whether by  
25 telephone or otherwise, any written confirmation, receipt, or reminder  
26 sent to any person who has contributed or has pledged to contribute,  
27 shall include a clear disclosure of the information required under  
28 subdivision (1) of this subsection.

29           (3) In addition to the information required by subdivision (1) of this  
30 subsection, any written confirmation, receipt, or reminder of  
31 contribution made pursuant to an oral solicitation and any written  
32 solicitation shall conspicuously state in capital letters:

33 'A COPY OF THE LICENSE AND FINANCIAL INFORMATION  
34 OF THE SOLICITOR MAY BE OBTAINED FROM THE  
35 DEPARTMENT OF HUMAN RESOURCES, SOLICITATION  
36 LICENSING BRANCH, BY CALLING (919) 733-4510.  
37 REGISTRATION DOES NOT IMPLY ENDORSEMENT,  
38 APPROVAL, OR RECOMMENDATION BY THE STATE.'

39 When the solicitation materials consist of more than one piece, the  
40 statement shall be displayed prominently in the solicitation materials.

41           (4) If requested by the person being solicited, the solicitor shall inform  
42 that person, in writing, within 14 days of the request, of the fixed  
43 percentage of the gross revenue or the reasonable estimate of the



percentage of the gross revenue that the charitable organization or sponsor will receive as a benefit from the solicitation campaign.

(5) If requested by the person being solicited, the solicitor shall inform that person, in writing, within 14 days of the request, of the percentage of the contribution which may be deducted as a charitable contribution under federal income tax laws.

(b) Tickets. – A solicitor shall not represent that tickets to any event will be donated for use by another person, unless:

(1) The solicitor has the written commitments from persons stating that they will accept donated tickets and specifying the number of tickets they are willing to accept.

(2) The written commitments are filed with the Department prior to any solicitation.

The contributions solicited for donated tickets shall not be more than the amount representing the number of ticket commitments received from persons and filed with the Department. At least seven days before the date of the event, the solicitor shall give all donated tickets to each person that made the written commitment to accept them.

#### **"§ 131F-18. Requirements of coventurers.**

(a) Written Consent. – Prior to the commencement of any charitable sales promotion or sponsor sales promotion in this State conducted by a coventurer on behalf of a charitable organization or sponsor, the coventurer shall obtain the written consent of the charitable organization or sponsor whose name will be used during the charitable sales promotion or sponsor sales promotion.

(b) Rules. – The Department may adopt rules requiring disclosure in advertising for a charitable sales promotion or sponsor sales promotion of information relating to the portion or amount that will benefit the charitable organization or sponsor or the charitable purpose or sponsor purpose.

(c) Final Accounting. – A final accounting for each charitable sales promotion or sponsor sales promotion shall be prepared by the coventurer following completion. The final accounting shall be provided to the charitable organization or sponsor on whose behalf the sales promotion was conducted within 10 days after a request by the charitable organization or sponsor. The final accounting shall be kept by the coventurer for a period of three years, unless the coventurer and the charitable organization or sponsor mutually agree that the accounting should be kept by the charitable organization or sponsor instead of the coventurer. A copy of the final accounting shall be provided to the Department no later than 10 days after the Department requests it.

### **"ARTICLE 4.**

#### **"PROHIBITED ACTS AND ENFORCEMENT.**

#### **"§ 131F-20. Prohibited acts.**

It is unlawful for any person to:

(1) Violate or fail to comply with the requirements of this Chapter.

(2) Act as a fund-raising consultant or solicitor after the expiration, suspension, or revocation of that person's license.

- 1           (3)    Enter into any contract or agreement with or employ a fund-raising  
2           consultant or solicitor unless that fund-raising consultant or solicitor is  
3           licensed by the Department.
- 4           (4)    Knowingly file false or misleading information in any document  
5           required to be filed with the Department or in response to any request  
6           or investigation by the Department or the Attorney General.
- 7           (5)    Make misrepresentations or misleading statements to the effect that  
8           any other person sponsors or endorses the solicitation, approves of its  
9           purpose, or is connected therewith, when that person has not given  
10          written consent to the use of that person's name.
- 11          (6)    Represent that a contribution is for or on behalf of a charitable  
12          organization or sponsor, or to use any emblem, device, or printed  
13          matter belonging to or associated with a charitable organization or  
14          sponsor, without first being authorized in writing to do so by the  
15          charitable organization or sponsor.
- 16          (7)    Use a name, symbol, emblem, device, service mark, or statement so  
17          closely related or similar to that used by another charitable  
18          organization or sponsor that the use would mislead the public.
- 19          (8)    Falsely state that the person is a member of or a representative of a  
20          charitable organization or sponsor or falsely state or represent that the  
21          person is a member of or represents law enforcement officers or  
22          emergency service employees.
- 23          (9)    Misrepresent or mislead anyone by any manner, means, practice, or  
24          device to believe that the person on whose behalf the solicitation or  
25          sale is being conducted is a charitable organization or sponsor, or that  
26          any of the proceeds of the solicitation or sale will be used for  
27          charitable or sponsor purposes.
- 28          (10) Represent that a charitable organization or sponsor will receive a fixed  
29          or estimated percentage of the gross revenue from a solicitation  
30          campaign greater than that identified in filings with the Department  
31          under this Chapter, or that a charitable organization or sponsor will  
32          receive an actual or estimated dollar amount or percentage per unit of  
33          goods or services purchased or used in the charitable or sponsor sales  
34          promotion that is greater than that agreed to by the coventurer and the  
35          charitable organization or sponsor.
- 36          (11) Use or exploit the fact of registration or the filing of any report with  
37          any governmental agency to lead any person to believe that the  
38          registration in any manner constitutes an endorsement or approval by  
39          the State. However, use of the statement required in G.S. 131F-9(c) or  
40          G.S. 131F-17(a)(3) is not a prohibited use or exploitation.
- 41          (12) Make misrepresentations or misleading statements to the effect that the  
42          donation of a contribution or the display of any sticker, emblem, or  
43          insignia offered to contributors shall entitle a person to any special

- 1 treatment by emergency service employees or law enforcement  
2 officers in the performance of their official duties.
- 3 (13) Solicit contributions from another person while wearing the uniform of  
4 an emergency service employee or law enforcement officer, or while  
5 on duty as an emergency service employee or law enforcement officer,  
6 except where the solicitation is for a charitable organization or sponsor  
7 or except when soliciting contributions to benefit an emergency  
8 service employee or law enforcement officer who has been injured in  
9 the line of duty or to benefit the family or dependents of an emergency  
10 service employee or law enforcement officer who has been killed in  
11 the line of duty.
- 12 (14) Solicit contributions on behalf of another person using any statement  
13 that the failure to make a contribution shall result in a reduced level of  
14 law enforcement services being provided to the public or the person  
15 solicited.
- 16 (15) Employ in any solicitation any device or scheme to defraud or to  
17 obtain a contribution by means of any deception, false pretense,  
18 misrepresentation, or false promise.
- 19 (16) Notify any other person by any means, as part of an advertising  
20 scheme or plan, that the other person has won a prize, received an  
21 award, or has been selected or is eligible to receive anything of value if  
22 the other person is required to purchase goods or services, pay any  
23 money to participate in, or submit to a promotion effort.
- 24 (17) Fail to provide complete and timely payment to a charitable  
25 organization or sponsor of the proceeds from a solicitation campaign  
26 or a charitable or sponsor sales promotion.
- 27 (18) Fail to apply contributions in a manner substantially consistent with  
28 the solicitation.
- 29 (19) Fail to identify the professional relationship to the person for whom  
30 the solicitation is being made.

31 **"§ 131F-21. Violation as deceptive or unfair trade practice.**

32 Any person who commits an act or practice that violates any provision of this  
33 Chapter engages in an unfair trade practice in violation of G.S. 75-1.1.

34 **"§ 131F-22. Criminal penalties.**

35 Except as otherwise provided in this Chapter and in addition to any administrative or  
36 civil penalties, any person who willfully and knowingly violates a provision of this  
37 Chapter commits a Class J felony. For a second or subsequent conviction, such  
38 violation constitutes a Class I felony.

39 **"§ 131F-23. Enforcement.**

40 (a) Investigation. – The Department may conduct an investigation of any person  
41 whenever there is an allegation or appearance, either upon complaint or otherwise, that  
42 a violation of this Chapter or of any rule adopted or of any order issued pursuant to this  
43 Chapter has occurred or is about to occur.

1       (b) Subpoena Power. – The Department may issue and serve subpoenas and  
2 subpoenas **duces tecum** to compel the attendance of witnesses and the production of all  
3 books, accounts, records, and other documents and materials relevant to an examination  
4 or investigation. The Department, or its duly authorized representative, may administer  
5 oaths and affirmations to any person.

6       (c) Court Action. – In the event of substantial noncompliance with a subpoena or  
7 subpoena **duces tecum** issued or caused to be issued by the Department, the Department  
8 may petition the superior court of the county in which the person subpoenaed resides or  
9 has the principal place of business for an order requiring the subpoenaed person to  
10 appear and testify and to produce any books, accounts, records, and other documents as  
11 are specified in the subpoena **duces tecum**. The court may grant injunctive relief  
12 restraining the person from collecting contributions and any other relief, including the  
13 restraint by injunction or appointment of a receiver, or any transfer, pledge, assignment,  
14 or other disposition of the person's assets, or any concealment, alteration, destruction, or  
15 other disposition of subpoenaed books, accounts, records, or other documents and  
16 materials as the court deems appropriate, until the person or organization has fully  
17 complied with the subpoena or subpoena **duces tecum** and the Department has  
18 completed its investigation or examination. The court may also order the person to  
19 produce a financial statement that has been audited by an independent certified public  
20 accountant. Costs incurred by the Department to obtain an order granting, in whole or  
21 in part, a petition for enforcement of a subpoena or subpoena **duces tecum** shall be  
22 taxed against the subpoenaed person and failure to comply with the order shall be  
23 contempt of court.

24       (d) Violations. – The Department may enter an order imposing one or more of  
25 the penalties set forth in subsection (e) of this section if the Department finds that a  
26 charitable organization, sponsor, fund-raising consultant, or solicitor, or their officers,  
27 agents, directors, or employees have engaged in any of the following acts:

- 28           (1) Violated or is operating in violation of any of the provisions of this  
29           Chapter or of the rules adopted or orders issued under this Chapter.
- 30           (2) Made a false statement in an application, statement, or report required  
31           to be filed under this Chapter.
- 32           (3) Refused or failed, after notice, to produce any records or to disclose  
33           any information required to be disclosed under this Chapter or the  
34           rules adopted by the Department.
- 35           (4) Made a false statement in response to any request or investigation by  
36           the Department or the Attorney General.

37       (e) Penalties. – Upon a finding as set forth in subsection (d) of this section, the  
38 Department may enter an order as follows:

- 39           (1) Imposing an administrative penalty not to exceed one thousand dollars  
40           (\$1,000) for each act or omission which constitutes a violation of this  
41           Chapter or a rule or an order.
- 42           (2) Issuing a cease and desist order that directs that the person cease and  
43           desist specified fund-raising activities.
- 44           (3) Refusing to register or cancelling or suspending a registration.



1 program is to help the public recognize unlawful, misleading, deceptive, or fraudulent  
2 solicitations and make knowledgeable, informed decisions concerning contributions.

3 (b) Information to Be Included. – The program shall include information  
4 concerning:

5 (1) The laws governing solicitations, including licensing and disclosure  
6 requirements, prohibited acts, and penalties.

7 (2) The means by which the public can report suspected violations or file a  
8 complaint.

9 (3) Any other information the Department believes will assist the public in  
10 making knowledgeable and informed decisions concerning  
11 contributions.

12 (c) Annual Report. – The Department shall prepare an annual report to be  
13 submitted to the Governor, the President of the Senate, and the Speaker of the House of  
14 Representatives summarizing the information filed under this Chapter which the  
15 Department determines will assist the public in making informed and knowledgeable  
16 decisions concerning contributions. The report shall include the following:

17 (1) A list of complaints filed for which violations were found to have  
18 occurred in each of the following categories: charitable organizations,  
19 sponsors, solicitors, and fund-raising consultants.

20 (2) A list of the number of investigations by the Department, enforcement  
21 actions commenced under this Chapter, and the disposition of those  
22 actions.

23 (3) A list of those charitable organizations and sponsors that have  
24 voluntarily submitted an audited financial statement pursuant to G.S.  
25 131F-6(a)(10) or an audit with an opinion prepared by an independent  
26 certified public accountant.

27 **"§ 131F-26. Contributions solicited for or accepted on behalf of a named**  
28 **individual.**

29 (a) Trust Account Required. – Contributions solicited for, or accepted by or on  
30 behalf of, a named individual shall be deposited in a trust account opened by a trustee  
31 named in a properly established trust document.

32 (b) Disbursements. – Disbursements of contributions may be properly made from  
33 a trust account only upon written verification from the trustee that the disbursement is in  
34 furtherance of the purpose for which the funds were solicited, with documentation  
35 reflecting the identity of the proposed payee and the justification for the proposed  
36 payment. Disbursements of contributed funds from a depository account may be made  
37 only as allowed by the court.

38 (c) Offense. – Any person or organization that violates the provisions of  
39 subsection (a) or subsection (b) of this section is guilty of a Class J felony.

40 **"§ 131F-27. Records.**

41 Each charitable organization, sponsor, fund-raising consultant, and solicitor shall  
42 keep, for a period of at least three years, true and accurate records as to their activities in  
43 the State. The records shall be made available to the Department for inspection and shall  
44 be furnished no later than 10 days after the request was made."

1           Sec. 3. This act becomes effective January 1, 1994.